

1 JANET L. CHUBB, ESQ.
 2 Nevada State Bar No. 176
 3 LOUIS M. BUBALA III, ESQ.
 4 Nevada State Bar No. 8974
 5 JONES VARGAS
 6 100 W. Liberty St, 12th Floor
 7 P.O. Box 281
 8 Reno, NV 89504-0281
 9 Telephone: 775-786-5000
 10 Fax: 775-786-1177
 11 Email: jlc@jonesvargas.com
 12 and tbw@jonesvargas.com
 13 and lbubala@jonesvargas.com

*Electronically Filed on:
March 13, 2007*

7 Attorneys for Fertitta Enterprises, Inc.

8 **UNITED STATES BANKRUPTCY COURT**

9 **DISTRICT OF NEVADA**

10 In re:

11 USA COMMERCIAL MORTGAGE COMPANY,
12 Debtor.

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR
Case No. BK-S-06-10729-LBR

13 USA CAPITAL REALTY ADVISORS, LLC,
14 Debtor.

Chapter 11

15 USA CAPITAL DIVERSIFIED TRUST DEED FUND,
16 LLC,
17 Debtor.

**AMENDED DECLARATION OF
WILLIAM J. BULLARD IN
SUPPORT OF
FERTITTA ENTERPRISES,
INC.'S AMENDED OPPOSITION
TO DEBTORS' MOTION TO
AUTHORIZE DEBTOR USA
COMMERCIAL MORTGAGE
COMPANY AS LOAN SERVICER
TO ACCEPT PAYMENTS AND
PROVIDE RECONVEYANCES
FOR TWO COLT GATEWAY
LOANS, WITH CERTIFICATE OF
SERVICE**

18 USA CAPITAL FIRST TRUST DEED FUND, LLC,
19 Debtor.

Hearing Date: March 15, 2007
Hearing Time: 9:30 am

20 USA SECURITIES, LLC,
21 Debtor.

Affects:

- All Debtors
- USA Commercial Mortgage Company
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed Fund, LLC
- USA Capital First Trust Deed Fund, LLC
- USA Securities, LLC

22 I, William J. Bullard, declare under penalty of perjury and state as follows:

23 1. I am the Chief Financial Officer at Fertitta Enterprises, Inc. ("Fertitta"), a co-lender
24 to the Colt Gateway LLC loan being administered by USA Commercial Mortgage Company
25 ("Debtor"). I have personal knowledge of the facts recited herein, and I am competent to testify
26
27
28

JONES VARGAS
100 W. Liberty Street, 12th Floor
P.O. Box 281
Reno, Nevada 89504-0281
Tel: (775) 786-5000 Fax: (775) 786-1177

1 regarding them, except with respect to those facts that are on information and belief, and as to
 2 those facts, I believe them to be true.

3 2. I make this Declaration in support of Fertitta's Opposition to Debtors' Motion to
 4 Authorize Debtor USA Commercial Mortgage Company as Loan Servicer to Accept Payments
 5 and Provide Reconveyances for Two Colt Gateway Loans.

6 **Colt Gateway's Ability to Pay Off the Loans**

7 3. On March 12, 2007, I spoke via telephone with Robert MacFarlane, president of
 8 Colt Gateway.

9 4. I asked Mr. MacFarlane to provide me with any written commitment that Colt
 10 Gateway has for financing to pay off the loans.

11 5. I later received a fax from Mr. MacFarlane consisting of an nonbinding and expired
 12 letter offer from PRIF II Acquisition, LLC, a true and accurate copy which is attached at Exhibit
 13 1.

14 6. The letter, dated January 22, 2007, states that it "constitutes neither an offer nor a
 15 commitment by PRIF in any form, but rather summarizes the terms of the proposed transaction."

16 7. The letter is not executed and states that the terms expired on January 29, 2007.

17 **Fertitta's Rights as a Lender**

18 8. Fertitta never waived its right to collect interest at the default rate on the Colt
 19 Gateway #1 Loan.

20 9. Colt Gateway has been in default on the Colt Gateway #1 loan since December 23,
 21 2003, because it did not pay off the loan by its maturity date of December 22, 2003.

22 10. I have not authorized, seen, or executed an extension of the promissory note.

23 11. Since the default, interest has accrued at the default rate of 20 percent, or 5 percent
 24 greater than the standard 15 percent interest rate.

25 12. Colt Gateway owes Fertitta \$310,688.57 in default interest from January 1, 2004,
 26 through February 28, 2007, based on the figures in the investor history report provided to me by
 27 USA Commercial (a true and accurate copy attached hereto as Exhibit 2) and the 5 percent

JONES VARGAS
 100 W. Liberty Street, 12th Floor
 P.O. Box 281
 Reno, Nevada 89504-0281
 Tel: (775) 786-5000 Fax: (775) 786-1177

1 increase in the interest rate after Colt Gateway's default, as evidenced by the spreadsheet attached
2 as Exhibit 2.

3 13. Fertitta never waived its right to collect late fees owed by the borrower on the Colt
4 Gateway #1 Loan.

5 14. Colt Gateway also owes Fertitta \$163,069.69 as the 5 percent late charge pursuant
6 to the terms of the loan documents and the outstanding balance of \$3,261,393.94 as of December
7 31, 2003, eight days after the loan matured and Colt Gateway defaulted, as evidenced by the true
8 and accurate copy of the investor history report attached as exhibit 2.

DATED this 13th day of March, 2007.

//s//William J. Bullard
WILLIAM J. BULLARD

JONES VARGAS
100 W. Liberty Street, 12th Floor
P.O. Box 281
Reno, Nevada 89504-0281
Tel: (775) 786-5000 Fax: (775) 786-1177

CERTIFICATE OF SERVICE

1. On March 13, 2007, I served the following document(s):

**AMENDED DECLARATION OF WILLIAM J. BULLARD IN SUPPORT OF
FERTITTA ENTERPRISES, INC.'S AMENDED OPPOSITION TO DEBTORS'
MOTION TO AUTHORIZE DEBTOR USA COMMERCIAL MORTGAGE COMPANY
AS LOAN SERVICER TO ACCEPT PAYMENTS AND PROVIDE RECONVEYANCES
FOR TWO COLT GATEWAY LOANS, WITH CERTIFICATE OF SERVICE**

2. I served the above-named document(s) by the following means to the persons as listed below:

- a. **ECF System** (attach the "Notice of Electronic Filing" or list all persons and addresses):

- MICHELLE L. ABRAMS mabrams@mabramslaw.com
- FRANKLIN C. ADAMS franklin.adams@bbklaw.com, arthur.johnston@bbklaw.com
- NANCY L ALLF nallf@parsonsbehle.com, klawrence@parsonsbehle.com; tthomas@parsonsbehle.com; ecf@parsonsbehle.com
- FRANK A. ANDERSON anderson.frank@pbgc.gov, efile@pbgc.gov
- OGONNA M. ATAMOH oatamoh@nevadafirm.com, bkecf@nevadafirm.com; paltstatt@nevadafirm.com; sliberio@nevadafirm.com
- KERIANN M ATENCIO ATENCIOK@GTLAW.COM
- BMC GROUP, INC. evrato@bmcgroup.com, ecf@bmcgroup.com; jmiller@bmcgroup.com; jbartlett@bmcgroup.com
- GEORGANNE W. BRADLEY georganne.bradley@bullivant.com, mary.opatrny@bullivant.com
- KELLY J. BRINKMAN kbrinkman@goldpatterson.com
- THOMAS R BROOKSBANK tom@tombrooksbank.com, renee@tombrooksbank.com
- ANDREW M. BRUMBY abrumby@shutts-law.com, rhicks@shutts-law.com; lmackson@shutts-law.com
- LOUIS M. BUBALA lbubala@jonesvargas.com, tbw@jonesvargas.com; bjlingenfelter@jonesvargas.com
- MATTHEW Q. CALLISTER mqc@callister-reynolds.com, maggie@callister-reynolds.com
- CANDACE C CARLYON ltreadway@sheacarlyon.com, ccarlyon@sheacarlyon.com; bankruptcyfilings@sheacarlyon.com; rmsmith@sheacarlyon.com
- ROB CHARLES rcharles@lrlaw.com, cjordan@lrlaw.com
- MICHAEL W. CHEN yvette@ccfirm.com
- KEVIN B. CHRISTENSEN kbchrislaw@aol.com
- JANET L. CHUBB tbw@jonesvargas.com
- JEFFREY A. COGAN jeffrey@jeffreycogan.com, sarah@jeffreycogan.com
- WILLIAM D COPE cope_guerra@yahoo.com
- CICI CUNNINGHAM bankruptcy@rocgd.com
- LAUREL E. DAVIS bklsclv@lionelsawyer.com, ldavis@lionelsawyer.com; gbagley@lionelsawyer.com; ldavisesq@aol.com
- DEBT ACQUISITION COMPANY OF AMERICA V, LLC (tf) tfette@daca4.com
- THOMAS H. FELL BANKRUPTCYNOTICES@GORDONSILVER.COM

1 • SCOTT D. FLEMING sfleming@halelane.com,
 2 dbergsing@halelane.com,ecfvegas@halelane.com
 3 • GREGORY E GARMAN bankruptcynotices@gordonsilver.com
 4 • WADE B. GOCHNOUR wgochnour@hwmlvlaw.com, donnat@hwmlvlaw.com
 5 • CARLOS A. GONZALEZ carlos.gonzalez2@usdoj.gov,
 6 Darlene.Ruckard@usdoj.gov;Eunice.Jones@usdoj.gov;Sue.Knight@usdoj.gov
 7 • GERALD M GORDON bankruptcynotices@gordonsilver.com
 8 • R. VAUGHN GOURLEY vgourley@lvcm.com
 9 • TALITHA B. GRAY bankruptcynotices@gordonsilver.com
 10 • JAMES D. GREENE bknotice@schrecklaw.com
 11 • MARJORIE A. GUYMON bankruptcy@goldguylaw.com, ddias@goldguylaw.com
 12 • JEFFREY R. HALL jhall@sheacarlyon.com,
 bankruptcyfilings@sheacarlyon.com;aboehmer@sheacarlyon.com;ltreadway@sheacarlyon
 .com;rsmith@sheacarlyon.com
 13 • XANNA R. HARDMAN xanna.hardman@gmail.com
 14 • STEPHEN R HARRIS noticesbh&p@renolaw.biz
 15 • JEFFREY L HARTMAN notices@bankruptcyreno.com
 16 • BRIGID M. HIGGINS bankruptcynotices@gordonsilver.com
 17 • JOHN HINDERAKER JHinderer@LRL.com
 18 • RICHARD F. HOLLEY rholley@nevadafirm.com,
 paltstatt@nevadafirm.com;vnelson@nevadafirm.com;sliberio@nevadafirm.com;bkecf@ne
 vadafirm.com
 19 • RANDOLPH L. HOWARD rhoward@klnevada.com,
 ckishi@klnevada.com;bankruptcy@klnevada.com
 20 • DAVID W. HUSTON dwh@hustonlaw.net, swaits@hustonlaw.net
 21 • CHRISTOPHER D JAIME cjaime@waltherkey.com, kbernhar@waltherkey.com
 22 • EVAN L. JAMES ejameslv@earthlink.net, kbchrislaw@aol.com
 23 • ANNETTE W JARVIS ajarvis@rqn.com
 24 • TY E. KEHOE TyKehoeLaw@aol.com
 25 • ROBERT R. KINAS rkinas@swlaw.com,
 jmcbee@swlaw.com;jmath@swlaw.com;imccord@swlaw.com
 26 • DEAN T. KIRBY dkirby@kirbymac.com,
 jhebert@kirbymac.com;lackerman@kirbymac.com
 27 • ZACHARIAH LARSON ecf@lslawnv.com
 28 • JOHN J. LAXAGUE jlaxague@caneclark.com
 • GEORGE C LAZAR glazar@foxjohns.com, gclazar@sbcglobal.net
 • NILE LEATHAM nleatham@klnevada.com,
 ckishi@klnevada.com;bankruptcy@klnevada.com
 • ROBERT C. LEPOME rlepome@cox.net, smstanton@cox.net
 • ANNE M. LORADITCH ecffilings@beckleylaw.com,
 aloraditch@beckleylaw.com;pkois@beckleylaw.com
 • PATRICIA A. MARR jjllaw@leelaw.lvcoxmail.com,
 lqlaw03@yahoo.com;mark@leelaw.lvcoxmail.com
 • JAMES C. MCCARROLL , dturetsky@reedsmith.com;leonard@reedsmith.com
 • REGINA M. MCCONNELL rmcconnell@kssattorneys.com
 • WILLIAM L. MCGIMSEY lawoffices601@lvcoxmail.com
 • RICHARD MCKNIGHT mcknightlaw@cox.net,
 gkopang@lawlasvegas.com;cburke@lawlasvegas.com

JONES VARGAS
 100 W. Liberty Street, 12th Floor
 P.O. Box 281
 Reno, Nevada 89504-0281
 Tel: (775) 786-5000 Fax: (775) 786-1177

- 1 • JEANETTE E. MCPHERSON bkfilings@s-mlaw.com
- 2 • JEANETTE E. MCPHERSON bkfilings@s-mlaw.com
- 3 • SHAWN W MILLER bankruptcyfilings@sheacarlyon.com,
smiller@sheacarlyon.com;aboehmer@sheacarlyon.com;ltreadway@sheacarlyon.com;rsmit
h@sheacarlyon.com
- 4 • DAVID MINCIN mcknightlaw@cox.net,
gkopang@lawlasvegas.com;dmincin@lawlasvegas.com,cburke@lawlasvegas.com
- 5 • JOHN F MURTHA jmurtha@woodburnandwedge.com
- 6 • ERVEN T. NELSON erv@rlbolick.com, susan@rlbolick.com
- 7 • VICTORIA L NELSON bkecf@nevadafirm.com,
vnelson@nevadafirm.com;paltstatt@nevadafirm.com;rholley@nevadafirm.com;sliberio@
nevadafirm.com
- 8 • BOB L. OLSON ecffilings@beckleylaw.com,
bolson@beckleylaw.com;dgriffis@beckleylaw.com
- 9 • DONNA M. OSBORN ebaker@marquisaurbach.com,
dosborn@marquisaurbach.com;tszostek@marquisaurbach.com;kgallegos@MarquisAurba
ch.com
- 10 • ANDREW M. PARLEN aparlen@stutman.com
- 11 • DONALD T. POLEDNAK sandplegal@yahoo.com, spbankruptcy@yahoo.com
- 12 • PAUL C RAY info@johnpeterlee.com
- 13 • CHRISTINE A ROBERTS bankruptcy@rocgd.com
- 14 • SUSAN WILLIAMS SCANN sscann@deanerlaw.com, palexander@deanerlaw.com
- 15 • LENARD E. SCHWARTZER bkfilings@s-mlaw.com
- 16 • JAMES PATRICK SHEA bankruptcyfilings@sheacarlyon.com,
ltreadway@sheacarlyon.com;rmsmith@sheacarlyon.com;aboehmer@sheacarlyon.com
- 17 • SHLOMO S. SHERMAN ssherman@sheacarlyon.com,
aboehmer@sheacarlyon.com;bankruptcyfilings@sheacarlyon.com;ltreadway@sheacarlyon
.com;rmsmith@sheacarlyon.com
- 18 • AMBRISH S. SIDHU ecf@lslawnv.com
- 19 • JEFFREY G. SLOANE gjklepel@yahoo.com, rmconnell@kssattorneys.com
- 20 • ALAN R SMITH mail@asmithlaw.com,
turk@asmithlaw.com;marsh@asmithlaw.com;darby@asmithlaw.com
- 21 • DAVID A. STEPHENS dstephens@lvcm.com
- 22 • PETER SUSI cheryl@msmlaw.com, msm@msmlaw.com
- 23 • JEFFREY R. SYLVESTER jeff@sylvesterpolednak.com,
David@sylvesterpolednak.com
- 24 • CARYN S. TIJSSELING ctijsseling@beckleylaw.com, jblair@beckleylaw.com
- 25 • AMY N. TIRRE , lleverett@kkbrf.com
- 26 • AMY N. TIRRE atirre@kkbrf.com, lleverett@kkbrf.com
- 27 • U.S. TRUSTEE - LV - 11 USTPRegion17.lv.ecf@usdoj.gov
- 28 • GREGORY J. WALCH GWalch@Nevadafirm.com
- RUSSELL S. WALKER rwalker@wklawpc.com,
eloveridge@wklawpc.com;lboynton@wklawpc.com;ckirk@wklawpc.com
- WHITNEY B. WARNICK wbw@albrightstoddard.com, bstessel@albrightstoddard.com
- WILLIAM J. WRAY wjw@oreillylawgroup.com,
rh@oreillylawgroup.com,bc@oreillylawgroup.com,lc@oreillylawgroup.com,ddh@oreillyl
awgroup.com,mr@oreillylawgroup.com
- JOAN C WRIGHT jwright@allisonmackenzie.com, jbrooks@allisonmackenzie.com

JONES VARGAS
100 W. Liberty Street, 12th Floor
P.O. Box 281
Reno, Nevada 89504-0281
Tel: (775) 786-5000 Fax: (775) 786-1177

1 • MATTHEW C. ZIRZOW bankruptcynotices@gordonsilver.com
2 • ANTHONY A. ZMAILA azmaila@nevadafirm.com,
3 bkecf@nevadafirm.com;mbarnes@nevadafirm.com,paltstatt@nevadafirm.com

4 9 b. **United States mail, postage fully prepaid** (list persons and addresses):

5 9 c. **Personal Service** (list persons and addresses):
6 I personally delivered the document(s) to the persons at these addresses:

7 9 For a party represented by an attorney, delivery was made by
8 handing the document(s) to the attorney or by leaving the document(s) at
9 the attorney's office with a clerk or other person in charge, or if no one is in
10 charge by leaving the document(s) in a conspicuous place in the office.

11 9 For a party, delivery was made by handing the document(s) to the
12 party or by leaving the document(s) at the person's dwelling house or usual
13 place of abode with someone of suitable age and discretion residing there.

14 ■ d. **By direct email (as opposed to through the ECF System)** (list persons
15 and email addresses):

16 **Frank Merola, Eve Karasik & Christine M. Pajak**

17 fmerola@stutman.com: ekarasik@stutman.com; cpajak@stutman.com

18 **Marc A. Levinson & Lynn Trinka Ernce**

19 malevinson@orick.com;lernce@orrick.com

20 **Andrew Welcher c/o William E. Winfield,**
21 wwinfield@nchc.com

22 **Steven C. Strong, & Douglas M. Monson**
23 sstrong@rqn.com; dmonson@rqn.com

24 **Leonard E. Schwartz**
25 Lschwartz@s-mlaw.com

26 **Susan M. Freeman**
27 sfreeman@lrlaw.com

28 **August B. Landis**
29 Augie.landis@usdoj.gov

30 **Nevada Mortgage Lending Division**
31 **Attn: Susan Eckhardt**
32 seckhardt@mld.nv.gov

33 Based upon the written agreement of the parties to accept service by email
34 or a court order, I caused the document(s) to be sent to the persons at the
35 email addresses listed below. I did not receive, within a reasonable time
36 after the transmission, any electronic message or other indication that the
37 transmission was unsuccessful.

38 9 e. **By fax transmission** (list persons and fax numbers):

JONES VARGAS
100 W. Liberty Street, 12th Floor
P.O. Box 281
Reno, Nevada 89504-0281
Tel: (775) 786-5000 Fax: (775) 786-1177

1 Based upon the written agreement of the parties to accept service by fax
2 transmission or a court order, I faxed the document(s) to the persons at the
3 fax numbers listed below. No error was reported by the fax machine that I
4 used. A copy of the record of the fax transmission is attached.

5 9 f. **By messenger:**

6 I served the document(s) by placing them in an envelope or package
7 addressed to the persons at the addresses listed blow and providing them to
8 a messenger for service. (A declaration by the messenger must be attached
9 to this Certificate of Service).

10 **I declare under penalty of perjury that the foregoing is true and correct.**

11 DATED this 13th day of March, 2007.

12 Louis M. Bubala III

13 Name

14 //s// Louis M. Bubala III

15 Signature

16 JONES VARGAS
17 100 W. Liberty Street, 12th Floor
18 P.O. Box 281
19 Reno, Nevada 89504-0281
20 Tel: (775) 786-5000 Fax: (775) 786-1177